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SUBJECT: IMO: LONDON CONVENTION REPORT - 29TH
CONSULTATIVE MEETING, LONDON 5 -9 NOVEMBER 2007

11. SUMMARY: The International Maritime Organization (IMO) combined annual meetings for both the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the 'London Convention') and the 1996 Protocol to the London Convention (the 'London Protocol') took place in London, November 5 to 9, 2007. The meetings, which were held concurrently, achieved success in a number of key areas, including a strong statement on the emerging and controversial issue of ocean iron fertilization that urged "States to use the utmost caution when considering proposals for large-scale ocean fertilization operations" and took the view that "given the present state of knowledge regarding ocean fertilization, such large-scale operations are currently not justified." Parties agreed to continue studying the scientific and legal perspectives of ocean iron fertilization through the London Convention/Protocol Scientific Groups and a Legal Correspondence Group, with a view to its eventual regulation. The London Protocol parties approved a compliance mechanism (which the United States helped to shape, even though we are not yet Protocol members), and adopted guidelines for sub-seabed carbon sequestration. The meetings also agreed to implement a strategic project to remove barriers to compliance with the Convention and Protocol. Asked about our progress in ratifying the London Protocol, the U.S. delegation informed the meeting that the President has submitted the Protocol to the Senate for its advice and consent.
END SUMMARY.

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Overview and Status of London Convention and
Protocol

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12. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the London Convention) established a first-ever global regime for the protection of the marine environment from pollution caused by ocean dumping and incineration at sea. It now has eighty-two Parties. The United States became a Party in 1975.

13. The 1996 Protocol to the London Convention (the London Protocol), a free-standing treaty, represents the culmination of an intensive effort to update the Convention to reflect current views on protection of the ocean and scientific improvements in environmental assessments. The Protocol is intended to eventually supersede the original London Convention. Unlike the London Convention, which lists substances that may not be dumped, the Protocol prohibits ocean dumping of any waste or other matter except for those specifically allowed to be considered for dumping (a "reverse list"). The text of the Protocol was adopted by Contracting Parties to the London Convention parties in 1996, and the United States signed the Protocol in 1998. The Protocol entered into force March 24, 2006. Currently 32 states are Parties to the 1996 Protocol, with at least seven more (including the United States) actively working towards accession. (NOTE: President Bush transmitted the Protocol to the U.S. Senate September 6, 2007, with his recommendation that the Senate give early and favorable consideration to this Protocol and give its advice and consent to ratification. END NOTE.)

Ocean Iron Fertilization

14. Iron fertilization is a potential greenhouse gas mitigation technique that works, in theory, by adding iron to stimulate phytoplankton blooms that

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sequester carbon dioxide in nutrient deficient regions of the ocean. In the spring of 2007 a U.S. company gained international attention when it announced plans for an iron fertilization project, for which it planned to sell carbon credits. The Scientific Groups of the London Convention and Protocol took up this controversial issue at their June 2007 meeting, and issued a "Statement of Concern" saying that the current knowledge about the effectiveness and potential environmental impacts of iron fertilization was "insufficient to justify large-scale operations," and also forwarded the issue to the general meetings of Convention and Protocol parties to consider "with a view to ensuring adequate regulation of such operations."

15. The November annual meeting of London Convention and Protocol parties saw lively discussions on the topic in plenary and break-out working group sessions throughout the week. Several parties and observers presented statements expressing their opposition to a proposal by a U.S. company for a ten-thousand square kilometer iron fertilization experiment approximately 350 miles west of the Galapagos Islands. Argentina, Bolivia, Colombia, Ecuador, Italy, Spain, Panama, Peru and Greenpeace International all expressed opposition to this particular proposal, and in some cases, to the concept of ocean iron fertilization in general. A statement by Vanuatu that nations should focus on reducing carbon dioxide emissions at the source rather than looking for potentially dangerous interim carbon sequestration solutions received noticeable indications of tacit support in the plenary session.

16. After considerable discussion about how to best handle this issue, the London Convention and Protocol parties endorsed the Scientific Groups' June 2007 "Statement of Concern" and agreed that the scope of work of the London Convention and

Protocol included ocean fertilization, as well as iron fertilization, and that the London Convention and Protocol were competent to address this issue within the jurisdiction of these treaties. Convention and Protocol parties also agreed that the legal and scientific aspects of the issue needed to be further investigated during the intersessional period, in order to reach a more informed decision on how to address this issue at the next annual meeting in October 2008. The meeting outcome that received the most attention in the press was the agreed text that said: "recognizing that it was within the purview of each State to consider proposals on a case-by-case basis in accordance with the London Convention and Protocol, parties urged States to use the utmost caution when considering proposals for large-scale ocean fertilization operations. The governing bodies took the view that, given the present state of knowledge regarding ocean fertilization, such large-scale operations were currently not justified."

¶17. The United States joined this consensus, but in numerous interventions also tried to balance the concerns about the uncertain efficacy and potential adverse side effects of iron fertilization with the need for further scientific investigations to explore the potential of iron fertilization as a climate change mitigation strategy.

¶18. COMMENT: The emerging and controversial issue of iron fertilization seemed to dominate the agenda, and was the main topic of conversation during coffee breaks and in the corridors. Throughout the discussions on iron fertilization, the United States strove to make the point that uncertainties about the efficacy and potential adverse side effects of iron fertilization should not be used as reasons to rule out further scientific investigations on a potentially powerful tool for

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mitigating global warming. Nevertheless, when voicing support for the final agreed text on iron fertilization, the U.S. delegation noted to the plenary that our concerns about allowing continued research should not be misconstrued as endorsing any particular ocean fertilization project, proposal or entity, or promoting the concept in general at this time. Despite the fact that the only private companies with announced plans for iron fertilization "experiments" are currently U.S. firms, the negative attention garnered by the issue did not detract from the U.S. delegation's ability to help negotiate a balanced final outcome statement, nor hinder our leadership on other critical London Convention and Protocol issues. END COMMENT.

CO2 Sequestration

¶19. At the 2006 annual meeting, London Protocol parties agreed to the adoption of an amendment to the Protocol that would amend Annex 1 (the "reverse list") to explicitly allow sequestration of carbon dioxide streams from carbon dioxide capture processes into sub-seabed geological formations (but not into the water column). That amendment took effect on February 10, 2007; however certain details of the carbon sequestration issue were left for the Protocol's Scientific Group to resolve. Earlier in 2007 the Scientific Group developed specific guidelines for carbon dioxide

sequestration in sub-seabed geological formations, and this meeting of the Contracting Parties adopted these "Guidelines for Assessment of Carbon Dioxide Streams for Disposal into Sub-seabed Geological Formations" and agreed to keep them under review and update them in five years or earlier, as warranted in light of new developments. The meeting also instructed the Scientific Group to develop an appropriate uniform format for the reporting of data, and to present this format at the next annual meeting in October 2008.

¶10. London Protocol Parties also addressed the potential issue of transboundary pollution resulting from sub seabed injection of carbon dioxide, and established a legal and technical working group on transboundary carbon sequestration issues. The Parties adopted the legal and technical working group's terms of reference and accepted Germany's offer to host the planned meeting of the legal and technical working group in early 2008. The terms of reference call for a legal evaluation of whether Article 6 of the Protocol, regarding export of wastes and other matter for disposal at sea, might need to be amended to allow transboundary transport of CO2 intended for sequestration in sub-seabed geological formations. They also call for consideration of the need for additional monitoring, notification, reporting, permitting, and other requirements.

Compliance Procedures and Mechanism

¶11. The meetings achieved progress on the London Protocol's compliance procedures and mechanism and related procedures, which had been under discussion for many years and needed to be in place by March ¶2008. Parties adopted compliance procedures and mechanisms pursuant to Article 11 of the Protocol. While the United States (which was active in the discussions even though not yet a Protocol party) had long resisted establishment of a formal compliance group with a set number of members and preferred to have compliance handled on a case-by-case basis as had been done under the London Convention, the final result is less onerous and has more procedural safeguards than some other

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mechanisms that have been recently developed in other multilateral environmental agreements. For example, although the Compliance Group is limited to 15 members, elected by the Meeting of Contracting Parties and having equitable geographic representation, the meetings of the Compliance Group are open to any party or non-party observer except when a Party whose compliance is in question requests a closed meeting. In addition the authority of the Compliance Group is limited and it may not take measures directly against a party having problems with compliance and instead can only make recommendations to the Meeting of Contracting Parties to this end. In addition, safeguards were added to the "party-to-party" submission in that the reporting party must first undertake consultations with the subject party before raising a compliance issue with the Compliance Group. Further, notice of all submissions shall be sent to all Parties for their information, to increase transparency.

¶12. Finally, the United States also achieved inclusion of language recognizing the competence of the International Atomic Energy Agency over all

issues involving radioactive wastes and other matter. This section (which recognized the International Atomic Energy Agency (IAEA) as the competent international body for all issues involving radioactive wastes and other radioactive matter, and for radiation protection of humans and the environment), was an item the U.S. delegation specifically requested be reinserted back into the compliance procedures document. It stated that for compliance matters involving radioactive wastes and other radioactive matter, the Secretariat shall refer the matter to the IAEA for technical evaluation and review, and the compliance group will take the IAEA's evaluation into account in its consideration of the matter. The U.S. delegation took this position as it did not want the compliance group to take independent action on radiological issues without IAEA involvement and advice. With these and other safeguards the Compliance Group should be a useful addition to the London Protocol regime. The United States will remain actively engaged in the implementation of the procedures and mechanisms.

Artificial Reefs and Placement

¶13. An ongoing discussion within the London Convention concerns the placement of material into the ocean for purposes other than disposal of that material, e.g. the creation of artificial reefs. A Correspondence Group had been working intersessionally to develop "Guidance for the Placement of Artificial Reefs." This group met informally during the week of the London meetings to discuss progress that has been made, and the Chair of the Correspondence Group sought approval of a revised and abbreviated document. The United States noted that the proposed format was a useful way forward but also noted that we will be able to provide more substantive comments on the next draft.

¶14. In plenary, Japan made an intervention asserting that the Guidelines are legally non-binding and intended only for "developing countries." The Chair of the Scientific Groups (a member of the U.S. delegation) responded by agreeing that the Guidelines are legally non-binding, but challenged the notion that they are intended only for "developing countries," by pointing out that they should be useful for a much broader audience. The plenary concluded discussion on the topic by urging Parties to provide comments and relevant information to the Chair of the Correspondence Group to assist with the

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finalization of the Guidelines, and agreeing that the final Guidelines should be submitted to the Governing Bodies with a view to their adoption at their next joint session in October 2008.

¶15. The issue of the ex-USS ORISKANY (a former aircraft carrier the U.S. Navy used to create an artificial reef off the coast of Florida), which Greenpeace International raised at the 2006 annual meeting, citing concerns over PCBs, was not mentioned at the 2007 meeting.

Scientific Work Group Issues and Actions

¶16. The London Convention has a Scientific Group

that meets each spring and works intersessionally on the technical issues of ocean dumping. The London Protocol Scientific Group meets concurrently with the London Convention's Scientific Group, through an agreed arrangement that the offices of Chair and Vice-Chair would consist of members representing both Parties to the Protocol and to the Convention.

¶17. The departing Chair of the London Convention Scientific Groups provided an overview of the 30th session of the Scientific Group (held in June 2007), and the meeting adopted the recommendations of this 30th Scientific Group session including the endorsement of the "Statement of Concern" on ocean iron fertilization, adoption of the "Guidelines for Assessment of Carbon Dioxide Streams for Disposal into Sub-seabed Geological Formations", adoption of the terms of reference for the legal and technical working group on transboundary carbon sequestration issues, and the adoption of a strategic approach for implementing the barriers to accession, implementation and compliance project. The Contracting Parties adopted standing terms of reference for both the London Convention and London Protocol Scientific Groups. Among other things, the two Groups are to work co-operatively in all matters of joint interest and mandate, while ensuring that matters of importance to the London Convention and London Protocol are adequately addressed. The Scientific Groups will hold their next meeting May 19-23 in Guayaquil, Ecuador.

Technical Cooperation and Barriers to Compliance

¶18. Parties made note of various technical cooperation projects over the past year to improve compliance with the London Convention and Protocol. They also noted a work group meeting in Spain last May on implementation of an e-form for reporting of dumping activities. The meeting discussed several outreach activities to raise the profile of the London Protocol and encourage additional countries to join it, such as workshops on the Protocol sponsored by the UNEP Regional Seas Programme, in particular a workshop on ocean dumping in February 2007 in Bahrain for countries in the Middle East and another outreach workshop on ocean dumping given in Ecuador in October 2007.

¶19. The governing bodies reviewed and adopted a Work Plan aimed at a strategic approach to helping countries overcome barriers to accession, implementation and compliance with the London Convention and Protocol. This Work Plan will help to prioritize support for States to overcome the legislative, institutional, technical and socio-economic barriers that have been identified towards full compliance with the London Convention and Protocol. The governing bodies noted with appreciation the substantial contributions pledged to execute this Work Plan by Canada (CS\$25000), France (US\$250000), Italy (US\$10000), United States

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(US\$20000), UNEP (US\$8000) and Spain (amount yet to be confirmed), while the Secretariat informed the Meetings that US\$63500 had been set aside in the IMO-ITCP for this purpose, focusing on countries in Eastern Europe and the CIS States for the period 2008 to 2009, as well as US\$30000 for Africa in ¶2008. The governing bodies also noted with appreciation the completion of the long-awaited Waste Assessment Guidance Tutorial and progress

with communicating and distributing the Tutorial to the various intended audiences.

BOUNDARY ISSUES

¶20. Certain issues related to marine environmental protection that are, in part, also covered by other international agreements such as MARPOL, are referred to as "boundary issues." Canada reported on the efforts of a joint working group between the London Convention/Protocol and the IMO's Marine Environmental Protection Committee (MEPC) to clarify boundary issues between the Convention/Protocol and MARPOL, particularly with respect to spoilt cargoes. Canada, the lead country, is preparing a revised draft of "advice to mariners" on managing spoilt cargoes under both instruments, taking into account comments on an earlier draft submitted by the United States and the Netherlands. Canada intends to submit "final draft" text for review by the London Scientific Groups in May 2008 and later by the Convention and Protocol governing bodies and MEPC 58 (October 2008).

¶21. The U.S. view is that the disposal of spoilt cargo at sea is subject to regulation under MARPOL only if it constitutes "garbage" as defined in MARPOL Annex V, regulation 1. Otherwise, it is subject to regulation as "dumping" within the London Convention/Protocol. Whether the disposal of a particular spoilt cargo is subject to the London Convention/Protocol or MARPOL Annex V must be determined on a case-by-case basis. Moreover, a careful review of Annex V and its implementing Guidelines led us to the conclusion that spoilt cargoes in most if not all cases do not fall under Annex V.

¶22. The United Kingdom reported on the development of advice by the London Scientific Groups' intersessional correspondence group on the management of waste streams resulting from the removal of anti-fouling systems from ships. The volume of these waste streams is expected to increase as a result of the impending entry into force (September 2008) of the Anti-Fouling Systems Convention (AFS). The Scientific Groups will continue their work with the aim of submitting advice to MEPC 58 and the next meeting of the London Convention and Protocol governing bodies.

Elections and Meeting Dynamics

¶23. Similar to the 2006 annual meeting, this combined London Protocol and London Convention meeting was ably chaired by Mr. Victor Escobar of Spain, who was particularly effective in guiding the meeting through the discussions on the controversial iron fertilization issue. The First Vice-Chair, Ms. Chen Yue from China, took a less active role, allowing Mr. Escobar to lead the meeting. Mr. Escobar and Ms. Chen were unanimously re-elected as Chair and First Vice Chair, respectively, for the intersessional period and the next meetings of the London Convention and London Protocol, which will be held October 27 - 31, 2008, in London. As no candidates have been nominated for the post of Second Vice Chair, the Secretariat will

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approach possible nominees via appropriate channels

and prepare a shortlist of candidates, focusing on candidates from developing countries, for consideration by member states before the next meetings.

Comment

¶24. This meeting of the London Convention and London Protocol parties was a success from the U.S. perspective. All the attention received by iron fertilization might seem to diminish the significance of some of the achievements at this meeting on other important issues covered by the London Convention and Protocol. However, the mainstay issues of the London Convention and Protocol (dumping of dredged material and other material at sea) will continue to be critical issues for all coastal and maritime states, especially given the increased overall concerns about land-based sources of marine pollution, and the upward trend of maritime trade resulting from increased globalization. If and when the United States ratifies the 1996 London Protocol (which is currently before the Senate), our membership in the Protocol will reaffirm our leadership role in international efforts to control marine pollution and protect the environment of the world's oceans.

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